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AFFINITIV, INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GULSHAN MADAN,  
Plaintiff,

v.

AFFINITIV, INC.,  
Defendant.

CASE NO. 2:23-cv-02737-CSK

**JOINT STIPULATION FOR  
PROTECTIVE ORDER**

Complaint Filed: 10/20/2023  
Removal Filed: 11/22/2023

1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action will involve production of confidential, proprietary, or private information, including but not limited to, confidential documents related to employment and personnel records, customer lists, proprietary, trade secret, or business information or documents, or other commercially or competitively sensitive information, or

1 medical records, for which special protection from public disclosure and from use for any purpose  
 2 other than for which special protection from public disclosure and from use for any purpose other  
 3 than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and  
 4 petition the court to enter the following Stipulated Protective Order. The parties acknowledge that  
 5 this Order does not confer blanket protections on all disclosures or responses to discovery and that  
 6 the protection it affords from public disclosure and use extends only to the limited information or  
 7 items that are entitled to confidential treatment under the applicable legal principles. The parties  
 8 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
 9 not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the  
 10 procedures that must be followed and the standards that will be applied when a party seeks  
 11 permission from the court to file material under seal.

## 12 2. **DEFINITIONS**

13 2.1 Challenging Party. A Party or Non-Party that challenges the designation of  
 14 information or items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items. Information (regardless of how it  
 16 is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule  
 17 of Civil Procedure 26(c).

18 2.3 Counsel (without qualifier). Outside Counsel of Record and House Counsel  
 19 (as well as their support staff).

20 2.4 Designating Party. A Party or Non-Party that designated information or  
 21 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material. All items or information, regardless of the  
 23 medium or manner in which it is generated, stored, or maintained (including, among other things,  
 24 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 25 responses to discovery in this matter.

26 2.6 Expert. A person with specialized knowledge or experience in a matter  
 27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
 28 witness or as a consultant in this action.

1           2.7    House Counsel. Attorneys who are employees of a party to this action.  
2   House Counsel does not include Outside Counsel of Record or any other outside counsel.

3           2.8    Non-Party. Any natural person, partnership, corporation, association, or  
4   other legal entity not named as a Party to this action.

5           2.9    Outside Counsel of Record. Attorneys who are not employees of a party to  
6   this action but are retained to represent or advise a party to this action and have appeared in this  
7   action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that  
8   party.

9           2.10   Party. Any party to this action, including all of its officers, directors,  
10   employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11          2.11   Producing Party. A Party or Non-Party that produces Disclosure or  
12   Discovery Material in this action.

13          2.12   Professional Vendors. Persons or entities that provide litigation support  
14   services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
15   organizing, storing, or retrieving data in any form or medium) and their employees and  
16   subcontractors.

17          2.13   Protected Material. Any Disclosure or Discovery Material that is designated  
18   as “CONFIDENTIAL.”

19          2.14   Receiving Party. A Party that receives Disclosure or Discovery Material  
20   from a Producing Party.

21          3.       **SCOPE**

22           The protections conferred by this Stipulation and Order cover not only Protected Material  
23   (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
24   all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
25   conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
26   However, the protections conferred by this Stipulation and Order do not cover the following  
27   information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
28   Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of

publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. **DURATION**

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. **DESIGNATING PROTECTED MATERIAL**

5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

1                   5.2     Manner and Timing of Designations. Except as otherwise provided in this  
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
4 designated before the material is disclosed or produced.

5             Designation in conformity with this Order requires:

6             (a)     For information in documentary form (e.g., paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
8 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion  
9 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
10 identify the protected portion(s) (e.g., by making appropriate markings in the margins.)

11             A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material  
13 it would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting  
15 Party has identified the documents it wants copied and produced, the Producing Party must  
16 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
17 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”  
18 legend to each page that contains Protected Material. If only a portion or portions of the material  
19 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
20 portion(s) (e.g., by making appropriate markings in the margins).

21             (b)     For testimony given in deposition or in other pretrial or trial proceedings, that the  
22 Designating Party identify on the record, before the close of the deposition, hearing, or other  
23 proceeding, all protected testimony.

24             (c)     For information produced in some form other than documentary and for any other  
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
26 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
27 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
28 practicable, shall identify the protected portion(s).

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
 2 to designate qualified information or items does not, standing alone, waive the Designating Party's  
 3 right to secure protection under this Order for such material. Upon timely correction of a  
 4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
 5 in accordance with the provisions of this Order.

6           6.     **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7           6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation  
 8 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 12 original designation is disclosed.

13          6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 14 process by providing written notice of each designation it is challenging and describing the basis  
 15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice  
 16 must recite that the challenge to confidentiality is being made in accordance with this specific  
 17 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith  
 18 and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of  
 19 communication are not sufficient) within 14 days of the date of service of notice. In conferring,  
 20 the Challenging Party must explain the basis for its belief that the confidentiality designation was  
 21 not proper and must give the Designating Party an opportunity to review the designated material,  
 22 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
 23 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process  
 24 only if it has engaged in this meet and confer process first or establishes that the Designating Party  
 25 is unwilling to participate in the meet and confer process in a timely manner.

26          6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
 27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
 28 Local Rule 230 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the

1 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
 2 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
 3 competent declaration affirming that the movant has complied with the meet and confer  
 4 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such  
 5 a motion including the required declaration within 21 days (or 14 days, if applicable) shall  
 6 automatically waive the confidentiality designation for each challenged designation. In addition,  
 7 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
 8 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
 9 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
 10 competent declaration affirming that the movant has complied with the meet and confer  
 11 requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
 15 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
 16 to retain confidentiality as described above, all parties shall continue to afford the material in  
 17 question the level of protection to which it is entitled under the Producing Party's designation until  
 18 the court rules on the challenge.

## 19 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is  
 21 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
 22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 23 disclosed only to the categories of persons and under the conditions described in this Order. When  
 24 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
 25 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and in  
 27 a secure manner that ensures that access is limited to the persons authorized under this Order.

28 ///

1                   7.2     Disclosure of “CONFIDENTIAL” information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4                   (a)     The Receiving Party’s Outside Counsel of Record in this action, as  
5 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
6 the information for this litigation;

7                   (b)     The officers, directors, and employees (including House Counsel) of  
8 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

9                   (c)     Experts (as defined in this Order) of the Receiving Party to whom  
10 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
11 and Agreement to Be Bound: (Exhibit A);

12                  (d)     The court and its personnel;

13                  (e)     Court reporters and their staff, professional jury or trial consultants,  
14 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
15 litigation;

16                  (f)     During their depositions, witnesses in the action to whom disclosure  
17 is reasonably necessary, unless otherwise agreed by the Designating Party ordered by the court.  
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
19 must be separately bound by the court reporter and may not be disclosed to anyone except as  
20 permitted under this Stipulated Protective Order.

21                  (g)     The author or recipient of a document containing the information or  
22 a custodian or other person who otherwise possessed or knew the information.

23                 8.     **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24                         **OTHER LITIGATION**

25                 If a Party is served with a subpoena or a court order issued in other litigation that compels  
26 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party  
27 must:

28                 (a)     Promptly notify in writing the Designating Party. Such notification shall



1 include a copy of the subpoena or court order;

2 (b) Promptly notify in writing the party who caused the subpoena or order to  
3 issue in the other litigation that some or all of the material covered by the subpoena or order is  
4 subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective  
5 Order; and

6 (c) Cooperate with respect to all reasonable procedures sought to be pursued by  
7 the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
9 or court order shall not produce any information designated in this action as “CONFIDENTIAL”  
10 before a determination by the court from which the subpoena or order issued, unless the Party has  
11 obtained the Designating Party’s permission. The Designating Party shall bear the burden and  
12 expense of seeking protection in that court of its confidential material – and nothing in these  
13 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
14 disobey a lawful directive from another court.

15 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
16 **PRODUCED IN THIS LITIGATION**

17 (a) The terms of this Order are applicable to information produced by a Non-  
18 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-  
19 Parties in connection with this litigation is protected by the remedies and relief provided by this  
20 Order;

21 (b) In the event that a Party is required, by a valid discovery request, to produce  
22 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
23 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

24 1. Promptly notify in writing the Requesting Party and the Non-Party  
25 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
26 Party;

27 2. Promptly provide the Non-Party with a copy of the Stipulated  
28 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific

1 description of the information requested; and

2 3. Make the information requested available for inspection by the Non-  
3 Party.

4 (c) If the Non-Party fails to object or seek a protective order from this court  
5 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
6 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
7 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
8 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
9 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden  
10 and expense of seeking protection in this court of its Protected Material.

11 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
13 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
14 the Receiving Party must immediately (a) notify in writing the Designating Party of the  
15 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
16 Material, (c) inform the person or persons to whom authorized disclosures were made of all the  
17 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
18 Agreement to Be Bound" that is attached hereto as Exhibit A.

19 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
20 **PROTECTED MATERIAL**

21 When a Producing Party give notice to Receiving Parties that certain inadvertently produced  
22 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
23 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended  
24 to modify whatever procedure may be established in an e-discovery order that provides for  
25 production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),  
26 insofar as the parties reach an agreement on the effect of disclosure of a communication or  
27 information covered by the attorney-client privilege or work product protection, the parties may  
28 incorporate their agreement in the stipulated protective order submitted to the court.

12. **MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 141.1 unless otherwise instructed by the court.

13. **FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protective Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained

any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work-product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 25, 2024

/s/ Renee Ortega (with permission)

Renee Ortega  
Attorneys for Plaintiff, Gulshan Madan

DATED: April 25, 2024

/s/ Wendy A. Walker

Wendy A. Walker  
Attorneys for Defendant, Affinitiv, Inc.

### **ORDER**

The Court has reviewed the parties' stipulated protective order. (ECF No. 15.) The stipulation comports with the relevant authorities and the court's applicable local rule. *See* L.R. 141.1. The Court APPROVES the protective order, subject to the following clarification. The Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); *see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc.*, 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed. Additionally, the parties shall consider resolving any dispute arising under the stipulated protective order according to the Court's informal discovery dispute procedure.

Dated: April 29, 2024

  
CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

3, mada.2737

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, of \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [DATE] in the case of *Madan v. Affinitiv, Inc.*, Case No. 2:23-cv-02737-CSK. I agree to comply with and to be bound by all terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purposes of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_